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No. 94-215

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

KATHLEEN M. MURPHY,

*Petitioner,*

*v.*

INTERNATIONAL BUSINESS MACHINES CORPORATION,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## RESPONDENT'S BRIEF IN OPPOSITION

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## STATEMENT PURSUANT TO RULE 29.1

Pursuant to Rule 29.1 of the Rules of the Supreme Court of the United States, Respondent International Business Machines Corporation ("IBM") discloses that it has no parent corporation and that the following publicly or privately owned corporations may be considered "subsidiaries" (but not wholly owned subsidiaries) of IBM: Marcam Corporation; Parallan Computer, Inc.; I/Net, Inc.; Rationale Software Corporation; Ancor Communications, Inc.; Fairway Technologies Associates; Advantis; Technology Service Solutions; Transarc Corporation; IBM Information Systems, Inc.; PC Service Partners, Inc.; and Nulogix Technical Services Ltd.

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## OPINIONS AND JUDGMENTS IN THE COURTS BELOW

The decision of the Magistrate Judge below, the Order of the District Court adopting that decision, and the Opinion of the Second Circuit are all attached to Petitioner's brief as Appendices C-1 through C-18, B-1,

and A-1 through A-12, respectively. Respondent respectfully requests that the petition for writ of certiorari, seeking review of the Second Circuit's opinion reported at 23 F.3d 719 (2d Cir. 1994), be denied.

## STATEMENT OF THE CASE

Petitioner Kathleen Murphy ("Murphy" or "Petitioner") was hired by Respondent International Business Machines Corporation ("IBM") as an associate programmer at IBM's Danbury, Connecticut facility in or about November of 1987. (*See* A 1; A 49).[1] In this capacity, Murphy was responsible for troubleshooting and resolving programming problems experienced by IBM customers with large computerized reservation databases, such as airlines and hotel chains. (A 40-41). Murphy consistently received praise for her performance. (A 50-55). Because such quality programmers were essential to the success of the Danbury operation, she was considered to be a critical resource within IBM. (*Id.*)

On May 22, 1991, IBM announced it was offering to Danbury employees a voluntary exit incentive program called the Individual Transition Option ("ITO"). (A 56-58). Shortly thereafter a summary plan description ("SPD") outlining the terms of the plan was distributed. (A 59-66). The plan's stated purpose was to reduce the number of employees in eligible skill families at various locations while retaining employees who were deemed to have skills essential to the continued efficient functioning of IBM's business. (A 17). IBM's description of the

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[1] For consistency, IBM adopts the abbreviations contained in Petitioner's Brief; thus, "A" followed by a number will refer to a page in the Joint Appendix filed with the Court of Appeals. "Petition A" followed by a number will refer to a page attached as part of the appendix to Petitioner's brief.

plan's eligibility requirements specifically stated that "[a]lthough an employee is eligible to be considered for the program, he or she is not automatically entitled to receive program benefits. Based on business needs, requests will be approved for this program." (A 17).

Decisions concerning eligibility for participation in the ITO were expressly reserved to the sound discretion of the plan administrator. The plan document plainly states that "[t]he Plan Administrator has authority and discretion to construe the terms of this program in a manner which is consistent with the intent of the ITO program" (A 12), elaborating as follows:

> IBM, in its discretion, will be the *sole determiner* of when an employee's departure is acceptable to the business and reserves the right to not approve an employee's request if management determines that the employee is necessary to the efficient operation of the business . . . Line management will recommend departure dates to the ITO Program Project Office based on business needs.

(A 17). (emphasis added).

Moreover, the plan administrator and the ITO project office, which was in charge of administering the plan, were vested with broad discretion to determine which employees should be denied benefits on the basis of critical skills. The plan administrator was thus specifically empowered to "make the final determination of which employees are approved for the program." (A 10). Eligibility determinations were to be made in consultation with line managers[2], who were responsible

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[2] In IBM, an employee's supervisor is referred to as the first line manager, the first line manager's supervisor is referred to as the second line manager, and so on. References to "line managers" are to those first, second and higher level managers to whom the employee reports.

for educating the plan administrator as to the need to retain an individual ITO applicant. (A 18).

Like all other employees in the Danbury facility, Murphy was provided with a copy of the ITO plan document and SPD and invited to apply for benefits. She did in fact submit an application for ITO benefits (but not until after securing an offer of employment from an IBM competitor, an offer she ultimately accepted). However, her application was denied, and her manager explained that as a programmer, she was deemed to be an essential employee and therefore ineligible for ITO benefits. (A 105-107).

Murphy initiated a challenge to the plan administrator's adverse decision approximately eight months after she left IBM. (A 142-143). This triggered an internal "Open Door" investigation.[3] Following a thorough inquiry, the Open Door investigator rejected Murphy's appeal, concluding that:

> [A]ny programmer not viewed as a performance problem, was and is, not eligible for this [ITO] program. The ES/LOB Director for Systems and Programming, Richard B. Butler, has stated that he will not pay good programmers to leave, and has been consistent in applying this in Danbury, Kingston, and Poughkeepsie. A review of all Danbury employees who applied for the ITO supports this. Of the six Danbury employees who applied for the ITO, four were accepted. One was a manager and one was an administrative specialist. The remaining

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[3] Pursuant to IBM's Open Door policy, employees may request that an internal investigation be conducted concerning any action taken during the course of his or her employment with which he or she does not agree.

> two were programmers with performance problems. The two others (Ms. Murphy included) were programmers with no performance problems, who were both denied the ITO.

(A 156-158).

Further internal appeals by Murphy were rejected, and the process finally culminated in a letter from the plan administrator to Murphy again explaining that her ITO application was properly denied on the ground that "[she] was considered a valued employee with essential skills that IBM wanted to retain consistent with [its] business needs." (A 149; 155).

## PROCEDURAL POSTURE OF THE CASE

Murphy initiated the present action by filing a complaint in the Superior Court of the State of Connecticut, Judicial District of Danbury, on January 11, 1993. IBM timely removed the case to the United States District Court for the District of Connecticut on or about January 28, 1993, and immediately moved to dismiss Murphy's state law claims as preempted by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1001, *et seq.* Murphy responded by filing an amended complaint on February 26, 1993, asserting claims under ERISA and federal common law, and alleging that IBM improperly denied her application for ITO benefits. (A 1). Following discovery, IBM filed a successful motion for summary judgment. (A 228, 237-238). Murphy's appeal to the Second Circuit was rejected by a panel comprised of Judges Kearse, Oakes, and Mahoney pursuant to a decision issued on May 5, 994. *Murphy v. International Business Machines Corp.*, 23 F.3d 719 (2d Cir. 1994). Murphy filed the instant

petition for a writ of certiorari on or about August 2, 1994.

## REASONS WHY THE WRIT SHOULD BE DENIED

### A. SUMMARY OF ARGUMENT.

The petition for writ of certiorari should be denied because Petitioner has failed to meet her burden of showing that there are special or important reasons warranting Supreme Court review of the Second Circuit's well-reasoned, legally sound decision. Contrary to Petitioner's representations, the Second Circuit's decision does not create a split among the Circuit Courts as to whether ERISA requires a plan administrator to provide specific and understandable reasons explaining a denial of benefits. The Second Circuit recognized that requirement and specifically found, as a factual matter, that the statement of the rationale for the adverse ITO decision was sufficient on its face to satisfy ERISA's requirements. (Petition A-8; Petition A-9).

Moreover, Petitioner misconstrues the Court of Appeals opinion when she asserts that factors outside the four corners of the notice of denial were improperly considered in assessing its adequacy. The Second Circuit only relied upon such factors in assessing whether the denial of benefits was marred by arbitrary or capricious decisionmaking.

### B. APPLICABLE STANDARD.

"A review on writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. Such a writ is granted only if the petitioner can point out "special and important reasons therefor," such as where

the challenged decision creates a conflict among the circuits. *Id.* Supreme Court review is thus unavailable where, as here, the petitioner merely challenges the Circuit Court's analysis of the particular facts involved or its construction of a contract or other written instruments. By rule and established practice, the Supreme Court does not "grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston,* 268 U.S. 220, 227 (1925); *Texas v. Mead,* 465 U.S. 1041 (1984).

C.

**PETITIONER HAS FAILED TO MEET HER BURDEN OF SHOWING THERE ARE SPECIAL OR IMPORTANT REASONS WARRANTING REVIEW OF THE SECOND CIRCUIT'S DECISION.**

Murphy's fundamental contention in support of her petition for a writ of certiorari is that the Second Circuit's decision is at odds with various rulings handed down by sister Circuit Courts. According to Petitioner, the Second Circuit departed from precedent by analyzing the sufficiency of the notice of denial of benefits in light of factors not expressly set forth in the notice itself. (Petitioner's Brief at 19-21). In so arguing, Petitioner badly misconstrues both the case law cited in her brief and the Second Circuit's holding.

First, none of the authorities cited by Petitioner as conflicting with the Second Circuit's decision actually hold that a plan administrator's denial of benefits must stand or fall on the reasons expressly set forth in the notification. At issue in those cases was not whether the sufficiency of the notice can be properly assessed in light of extraneous evidence, but merely whether the Notice itself adequately explained the basis for an adverse decision. *See Vanderklok v. Provident Life and Accident*

*Insurance Co., Inc.*, 956 F.2d 610, 615-17 (6th Cir. 1992) (letter denying benefits failed to provide specific reasons for denial or make specific reference to pertinent plan provisions on which the denial was based); *Bernards v. United of Omaha Life Insurance Co.*, 987 F.2d 486, 488-89 (8th Cir. 1993) (plan administrator provided only a cryptic explanation for denial of employee's request for coverage of chemotherapy and bone marrow transplant, which was insufficient to allow for meaningful judicial review); *Halpin v. W.W. Grainger, Inc.*, 962 F.2d 685, 693-97 (7th Cir. 1992) (conclusory explanation for decision to terminate disability benefits that failed to address contradiction between termination decision and diagnosis of treating physician deemed inadequate). The alleged conflict among the Circuit Courts is thus nothing more than a fabrication by Petitioner.[4]

Second, contrary to Petitioner's contention, the Second Circuit did *not* find that the denial notice was facially inadequate but nonetheless lawful because it was supported by undisputed facts not set forth therein. Rather, the Court held that the notice was lawful on its face, and *also* separately concluded the uncontroverted evidence precluded a finding that the denial of

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[4] Indeed, Circuit Court decisions actually addressing the question have found it appropriate to consider facts outside the four corners of the denial notice in assessing whether ERISA's disclosure obligations have been met. *See Davidson v. Prudential Ins. Co. of America*, 953 F.2d 1093, 1096 (8th Cir. 1992) (requirement that ERISA plan administrator explain the rationale for decisions was satisfied even though initial denial letter was cursory, where two subsequent letters and phone conversations "ensured [plaintiff] had adequate notice of why his claim was denied, how to seek review of the decision, and what additional information would assist in the review process").

benefits was so irrational as to constitute an abuse of discretion.

The Court of Appeals relied upon evidence concerning Petitioner's value to IBM as a programmer for the sole and exclusive purpose of demonstrating that the plan administrator's decision not to award Petitioner ITO benefits was rational and well-founded. The Second Circuit cited this evidence in rejecting Murphy's primary contention on appeal that the challenged decision failed to satisfy the arbitrary and capricious test articulated by this Court in *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989).[5] Wholly apart from this holding was the Second Circuit's legal conclusion that the statement of the reasons for the benefit denial was sufficiently detailed to meet ERISA's disclosure requirements.

The separateness of the holdings on each of these distinct issues is obvious from the Court's summation of its conclusion in the disjunctive: "In light of the IBM evaluations of Murphy as an excellent and outstanding employee who was a 'critical resource' within IBM, and the highly discretionary terms of the plan, the denial of benefits on the ground that Murphy had been determined to be necessary to IBM's business cannot be deemed arbitrary and capricious, *and* the statement of the rationale for that decision was sufficient." (Petition A-8; Petition A-9) (emphasis added).

Finally, Petitioner substantially overstates the import of the Second Circuit's decision, offering a prediction of gloom designed to convince this Court the present case is of substantial importance. According to Petitioner, the Circuit Court "effectively" licensed the drafting of plans

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[5] Petitioner does not dispute that this deferential standard of review was properly applied by the courts below.

in such a way as to eviscerate meaningful judicial review. (Petitioner's Brief at 28-31). In her words: "The Second Circuit in essence stated that an employer is not required to disclose the specific and understandable reasons for plan action if the plan action relates to the exercise of discretion reserved to the employer under a plan." (*Id.* at 28-29). Again, Petitioner misreads the Court's opinion.

The fundamental flaw in Petitioner's contention lies in its premise, namely the characterization of the Second Circuit's opinion as holding that a plan administrator need not set forth specific reasons supporting a discretionary denial of benefits. No such principle of law can be gleaned from the Circuit Court's opinion; indeed, ERISA expressly requires an articulation of the reasons why a claim for benefits was rejected. 29 U.S.C. §1133. The Second Circuit did not disregard ERISA's disclosure requirements, but simply rejected Petitioner's factual assertion that the notice was legally insufficient.

Petitioner is left only to complain about the Second Circuit's application of the law to the undisputed facts. Petitioner has already asked two courts to review the Plan Administrator's decision and both have ratified that decision. This Court should not again review the determination made by lower courts concerning such inherently factual issues. While this issue may in a given case be of significance to the disappointed individual ERISA plan participant, it falls far short of satisfying the "substantial importance" standard contemplated by the rules governing this Court's consideration of petitions for writs of certiorari.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit should be denied.

Respectfully submitted,

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September 2, 1994

## CERTIFICATION

This is to certify that on this the 2nd day of September, 1994, three copies of the foregoing Brief of Respondent were sent via United States mail to:

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_____

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